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BUREAU OF LAND MANAGEMENT  
Eastern States  
20 M Street, SE Suite 950  
Washington, DC 20003  
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In Reply Refer To:  
3120 (930 JRK)  
March 2017 Lease Sale

**MAR 22 2017**

Center for Biological Diversity  
121 Broadway #800  
Oakland, CA 94612

Sierra Club  
2101 Webster Street, Suite 1300  
Oakland, CA 94612

Ohio Environmental Council  
1145 Chesapeake, Ave., Suite I  
Columbus, OH 43212

Heartwood  
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Bloomington, IN 47402

Athens County Fracking Action  
8474 Terrell Rd  
Athens, Ohio 45701

Buckeye Environmental Network  
15 Granville Ave  
Athens, Ohio 45701

**DECISION**

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:

March 23, 2016  
Competitive Oil and Gas  
Lease Sale

**PROTEST DENIED**

On February 13, 2017, the Bureau of Land Management (BLM) Eastern States Office (ESO) timely received a protest filed on behalf of the above cited parties (Protesters) disputing the inclusion of twenty-one parcels located within the Marietta Unit, Wayne National Forest, Monroe County, Ohio (Subject Parcels)<sup>1</sup> in the BLM Eastern States March 23, 2016 Competitive Oil and Gas Lease Sale Notice (March Lease Sale). However, Eastern States is withdrawing one Ohio Parcels from the originally listed Subject Parcels in the sale notice to resolve questions of ownership and existing rights for minerals acquired by the United States government during the formation of the Wayne National Forest. Once these questions are resolved, the removed Subject Parcel may be offered at the next available competitive lease sale. For the reasons stated below, the protest is hereby denied.

<sup>1</sup> OHES 058226; OHES 058227; OHES 058228; OHES 058229; OHES 058230; OHES 058231; OHES 058232; OHES 058233; OHES 058234; OHES 058235; OHES 058236; OHES 058237; OHES 058240; OHES 058243; OHES 058249; OHES 058251; OHES 058252; OHES 058254; OHES 058255; OHES 058256; OHES 058257.

## **BACKGROUND**

### ***Parcel Review***

Between April, 9, 2012 and April 19, 2012, Subject Parcels were nominated for ESO's consideration to lease by interested parties in accordance with 43 CFR §3120.3. Subject Parcels include unleased federal mineral estate administered by BLM, and within the jurisdiction of ESO and the Northeastern States District (NSD). Following ESO's preliminary adjudication of ownership and availability of minerals, Subject Parcels were forwarded to the NSD for review of environmental concerns, including interdisciplinary analyses and field visits, in compliance with National Environmental Policy Act (NEPA) and BLM's national policy codified in BLM manuals, handbooks, and Instruction Memorandums, as further discussed below.

When BLM seeks to issue oil and gas leases for acquired lands managed by the Forest Service, such as the Subject Parcels, the Federal Onshore Oil and Gas Leasing Reform Act (FOOGLRA) requires consent from the Forest Service prior to leasing, as well as Forest Service input on necessary stipulations (30 U.S.C. § 226(h)). Accordingly, NSD's review included a request for Forest Service inspection of the proposed parcels, consent to ensure leasing of the parcels would be in conformance with the applicable Forest Plan decisions, and the receipt of consent to offer the described parcels, as further discussed below.

### ***National Environmental Policy Act Analysis***

In compliance with NEPA, BLM undertook an Environmental Analysis (EA) to determine whether oil and gas leasing within 40,000 acres of the Marietta Unit, Wayne National Forest could occur with no significant environmental impact, or if a more in depth environmental impact statement would be required prior to offering of Subject Parcels. The NSD conducted site visits on October 26 and 27, 2015 within portions of the Marietta Unit. The NSD also evaluated potential effects: Air Resources/Climate Change, Plant and Animal Habitat/Populations; Geology and Mineral Resources; Soils; Water Resources/Water Quality; Wastes (Hazardous or Solids); Public Health and Safety; Transportation; Land Use and Recreation; Noise; Cultural Resources/Paleontology; Native American Religious Concerns; Visual Resources/Scenic Quality; Socioeconomics and Environmental Justice; and Cumulative Impacts. As further discussed below, during the EA process, NSD incorporated the 2005 Biological Opinion (BO) prepared for the 2006 Forest Plan and Final Environmental Impact Statement (2006 FP/FEIS), and finding no potential significant impact to the Wayne National Forest from future and current oil and gas development, as well as a 2016 Biological Opinion (BO) prepared to evaluate potential impacts to specific bat species of activities such as oil and gas development.

In November 2015, the BLM also created a project website for the Marietta EA to provide the public links to documents, additional project information and comment opportunities, including methods for comment submission, maps and EOI information. The website is accessible through the BLM National NEPA Register<sup>2</sup>. On April 28, 2016, the draft Marietta EA was posted on the

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<sup>2</sup> [https://eplanning.blm.gov/epl-front-office/eplanning/nepa/nepa\\_register.do](https://eplanning.blm.gov/epl-front-office/eplanning/nepa/nepa_register.do)

project website in accordance with applicable BLM Manual and Handbook 3120 Competitive Leasing and Washington Office IM No. 2010-117. As a result of the public review period, the BLM received approximately 13,700 comments by email and 480 comments by U.S. postal service or FedEx. Approximately 300 comments were identified as substantive in accordance with NEPA. Public comments were addressed by either expanding existing sections of the EA, providing clarification, or adding additional information. On October 14, 2016, BLM posted EA DOI-BLM-Eastern States-0030-2016-0002-EA, Oil and Gas Leasing, Wayne National Forest, Marietta Unit of the Athens Ranger District (Marietta EA). The changes made to the draft Marietta EA are summarized in a comment matrix attached as Appendix A in the Marietta EA.

In accordance with *BLM National Environmental Policy Act Handbook H-1790-1* (NEPA Handbook), *Section 6.2.1*, NSD developed a purpose and need statement early on in the environmental review, and utilized said statement to dictate the scope of the Marietta EA. The Marietta EA describes its purpose and need as follows (Page 16):

The purpose of the Proposed Action is to support the development of oil and natural gas resources that are essential to meeting the nation's future needs for energy while minimizing adverse effects to natural and cultural resources. The BLM minimizes adverse effects to resources by identifying appropriate lease stipulations and notices, best management practices, and mitigations. It is the policy of the BLM as mandated by various laws, including the Mineral Leasing Act of 1920, as amended (30 United States Code [USC] 181 et seq.), the Federal Land Policy and Management Act of 1976 (FLPMA), and the Energy Policy Act of 2005 to make mineral resources available for development to meet national, regional, and local needs. The oil and gas leasing program managed by the BLM encourages the sustainable development of domestic oil and gas reserves which reduces the dependence of the United States on foreign sources of energy as part of its multiple-use and sustainable yield mandate.

The leasing of federal minerals is vital to the United States as it seeks to maintain adequate domestic production of this strategic resource. Industry uses the BLM EOI process to nominate federal minerals for leasing. The Proposed Action is consistent with the BLM's mission and requirement to evaluate nominated parcels and hold quarterly competitive lease sales for available oil and gas lease parcels.

Under Section 102(2)(E) of the Federal Land Management Act (FLPMA), and 40 CFR 1508.9(b), BLM is required to "include brief discussions...of alternatives" used in the environmental analysis to determine the best means of mitigating environmental impacts while satisfying the purpose and need of the proposed action. The Marietta EA considered two alternatives in detail (Pages 21-29):

#### **Alternative 1- No Action Alternative**

Under the No Action Alternative, the BLM would not offer federal minerals in the Marietta Unit for oil and gas leasing, including both the parcels requested in currently pending EOIs and all other federal minerals in the Marietta Unit. Without a lease (No Action Alternative), operators would not be authorized to access federal minerals at the

time of development but could develop adjacent privately owned minerals, potentially resulting in drainage of federal minerals without benefit to the government.

### **Alternative 2- Lands Available for Leasing Alternative**

Under this alternative, the Bureau of Land Management (BLM) proposes to make available for lease up to approximately 40,000 acres of federally-owned mineral estate located in the Marietta Unit of the Athens Ranger District, Wayne National Forest, in Monroe, Noble, and Washington Counties in Ohio. This approximate acreage represents the total amount of federally-owned minerals that could be nominated and potentially be made available for leasing on the Marietta Unit. Although this EA analysis assumes that both oil and gas may be produced in the future within the Marietta Unit, natural gas is more likely to be produced.

Furthermore, the Marietta EA considered, but eliminated from detailed analysis, additional alternatives (Page 29):

#### **Offer all leases with a no-surface-occupancy stipulation**

Offering all leases with a no-surface-occupancy (NSO) stipulation was suggested through public comment. However, this alternative would not fulfill the purpose and need described in Chapter 1. This alternative would unnecessarily constrain oil and gas occupancy, especially in this highly fragmented landscape, where the ability to cross federal land may be critical to enabling an operator to develop. A No Surface occupancy stipulation has been incorporated for all slopes in excess of 55 percent and a Controlled Surface Use stipulation applies to slopes between 35 and 55 percent.

#### **Lease minerals for vertical drilling only**

Offering all leases with a vertical drilling only stipulation was suggested through public comment. However, this alternative would not fulfill the purpose and need described in Chapter 1. A vertical drilling only stipulation would likely result in far greater surface disturbance as more wells would likely be drilled, and result in the least efficient extraction of Federal minerals. The rule of capture is an oil and gas doctrine that allows one to produce oil and gas from their lands even though said oil and gas flows from the lands of their neighbors. In Ohio, the rule of capture entitles landowners to “offset” wells, or wells that do not need to conform with state conservation standards, when one's neighbor is draining their mineral interest. Second, a vertical drilling only alternative is equivalent to a ban on directional drilling, which in turn would be tantamount to a ban on development of the Utica, Marcellus, and other tight formations underlying the forest. Such tight formations require horizontal drilling to extract trapped oil and gas.

Through the analysis in the 2006 Forest Plan/Final Environmental Impact Statement (2006 FP/EIS), as reaffirmed in light of the 2012 Supplemental Information Report (2012 SIR), Marietta EA, the NSD determined the Subject Parcels were appropriate for leasing and what mitigation measures (stipulations) should be applied to the leases for the protection of natural and cultural resources. On October 14, 2016, a FONSI was signed by the NSD District Manager

documenting BLM's determination that oil and gas development may occur without significant impact, and thus, no EIS is not required to offer Subject Parcels for lease.

### ***Protesters' Standing***

On January 13, 2017, BLM posted Notice of Competitive Oil and Gas Internet-Based Lease Sale for the March Lease Sale. The Sale Notice described the manner in which a member of the public could protest inclusion of lands in the planned sale including these requirements (Page 9):

- *A protest must state the interest of the protesting party in the matter....*
- *If the party signing the protest is doing so on behalf of an association, partnership or corporation, the signing party must reveal the relationship between them. For example, unless an environmental group authorizes an individual member of its group to act for it, the individual cannot make a protest in the group's name.*

The BLM received a protest letter from the groups listed above, on February 13, 2017. In the Protest Letter (Pages 3-4), the groups provided a summary of their organizations' general objectives. The protest letter was only signed by attorneys for Center for Biological Diversity and Ohio Environmental Council (Page 17). Names of affiliates from Heartwood, Sierra Club, Athens County Fracking Action Network, and Buckeye Environmental Network were provided without signatures.

None of the parties have provided to the BLM "colorable allegations of an adverse effect, supported by specific facts, set forth in an affidavit, declaration, or other statement of an affected individual, sufficient to establish a causal relationship between the approved action and the injury alleged" (183 IBLA 97, 107). These groups attempt to establish allegations of all adverse effects by including general claims of use of the WNF by some members. However, it is not clear whether this statement establishes Protesters as a party to the case and as having a legally cognizable interest that would be adversely affected by the BLM's decision to issue any of the protested leases.

Nonetheless, given the BLM's directions to the public in the Sale Notice regarding submittal of protests, and the lack of specific agency guidance for adjudicating when an individual or group may have standing to protest lease parcels, the BLM has decided to answer the specific arguments made by the Protesters. However, the BLM does so with the reservation that the Protesters may not have standing to bring an appeal of this protest decision to the IBLA.

### **DISCUSSION**

BLM has identified the substantive arguments from the Protest Letter as to why the Subject Parcels should not be offered at the March Lease Sale. The following is a discussion of the specifics as to the Protesters' arguments, as well as BLM Eastern States' responses.

Protesters "incorporate here by reference and attach as exhibits our previous comment letters and written protest on the 2016 Lease Sale including all document referenced therein" (Page 4). BLM refers Protesters to all BLM's previous responses to all properly filed documents for

incorporated by protest, for which BLM was required to respond.

**A. The EA and Finding of No Significant Impact (“FONSI”) Violate the National Environmental Policy Act’s (“NEPA”) “Hard Look” Requirement**

Protesters argue that “BLM is required to prepare an EIS, or, at minimum, an EA for this sale to determine whether or not an EIS is needed.... [i]nstead, BLM relied on the same programmatic EA that BLM relied on for the 2016 sale, which discusses in very broad terms the general leasing of all federal mineral estate” (Protest Letter at Page 5). As discussed throughout this decision, BLM and the Forest Service diligently analyzed potential impacts of oil and gas development on the Subject Parcels via planning and NEPA analyses. BLM and Forest Service found through multiple NEPA analyses that environment impacts of oil and gas development would pose no significant environmental impact if mitigating measures were adopted, when necessary. and therefore, no EIS was necessary.

***i. BLM Failed to Take a Hard Look at the Environmental Impacts of Opening Up Private Minerals***

Protesters argue that “leasing federal minerals would open up substantial private minerals and private surface for development, and is geared towards that end, but BLM failed to clearly disclose these effects” (page 5). However, BLM addresses the potential opening up private minerals for oil and gas development throughout the Marietta EA. The Marietta EA clearly states (Page 121):

Leasing federal minerals within the Marietta Unit may lead to additional future mineral development on private land and private minerals within the area. Although federal oversight of mineral development on federal land/federal minerals is more stringent than on private land/private minerals, there are numerous state laws and regulations in place. Appendix C of this EA summarizes the laws and regulations that govern mineral development activities on private land in Ohio.

Also, the Marietta EA describes the inclusion of private mineral development analysis in the Reasonable Foreseeable Development Scenario RFDS (Page 24):

...this EA analysis covers the potential impacts of future oil and gas development on both the Forest Service lands and on adjacent private lands within the Marietta Unit to allow for maximum NEPA flexibility and coverage in case conditions should change in the future.

Furthermore, the Marietta EA explicitly states that existing private development is considered in the cumulative analysis (Page 121):

...the cumulative effects analysis also considers recent past, ongoing, and reasonably foreseeable mineral development (private and federal) within the Marietta Unit. As of 2015, there were 285 federal wells in Washington County, 117 federal wells in Monroe County, and none in Noble County. There were a total of 790 active wells on private

lands in the Wayne National Forest.

Addressing concerns about potential environmental impact of private development, the Marietta EA states:

...if some development were to occur on privately owned surface federal and state regulation do exist in order to address any potential concerns regarding contamination or spills. However, if the development occurs on private lands and pipelines or well development reaches federal minerals, the BLM would ensure that the construction of such well is in compliance with all applicable safety standards

Furthermore, the Marietta EA responds to comments regarding private development as indicated in the Public Comment Matrix (Appendix A, Page 161), and further elaborated upon in Appendix C (Page 195).

Therefore, Protesters arguments as to BLM failure to consider development on private surface are denied.

***ii. BLM Failed to Adequately Address Potential Impacts to Threatened and Endangered Species, as Required by NEPA***

Protesters argue “[the Marietta] EA fails to adequately address the potential impacts from the proposed oil and gas leasing on species that are federally designated as threatened or endangered with extinction, including the Indiana bat, Northern long-eared bat, fanshell, pink mucket pearly mussel, sheepnose mussel, and snuffbox mussel” (Page 46). However, the Marietta EA adequately addresses wildlife and special status species.

As to the Indiana bat, the Marietta EA states that there are no documented hibernacula within the Marietta Unit in Ohio (Page 48):

The WNF contains one documented hibernaculum, and it is not on the Marietta Unit...the Athens and Ironton Units most likely contain the most heavily concentrated populations of Indiana bat, based on thorough surveys conducted previously throughout the WNF by the USFWS.

The BLM also adopts in the Marietta EA the Northern Long-Eared Bat 4(d) Rule, recently issued by the FWS, to address the newly listed Northern Long Eared bat (Page 19):

More recently, a BO was issued by the USFWS in 2016 for the 4(d) rule for the federally listed, threatened northern long-eared bat. This rule exempts incidental take of northern long-eared bat for federal actions that adhere to certain, basic conservation measures. The Forest Service operates under this BO and therefore the Proposed Action is also covered under the BO.

For the Northern Long Eared Bat, the Marietta EA clearly states BLM reliance on the 4(d) Rule for the Northern Long-Eared Bat of the USFWS. This rule states that in areas of the bat’s range that may be affected by white-nose syndrome, incidental take caused by some tree removal and

tree-clearing activities, does not need to be prohibited to conserve the bat if conservation measures that protect the bat's most vulnerable life stages are taken. Specifically, the Marietta EA states (Page 100):

The Forest Service activities fall under the 4(d) rule that exempts incidental take of northern long-eared bat, provided those activities adhere to certain, basic conservation measures to protect hibernacula and roost trees.

As to Aquatic Species, the Marietta EA states (Page 49):

Fanshell and pink mucket pearlymussel are not documented anywhere on the WNF... Sheepnose and snuffbox may be present on waterways within the WNF and were not included in the 2005 BO, but the USFWS concurred with the Forest Service that the 2012 SIR did not need any update regarding these species because neither of these species would be affected by oil and gas activities on the national forest.

Furthermore, the protective measures attached to a lease provide the prospective lessee notice that protection of those species must be taken into consideration if an application for permit to drill is submitted to the BLM. Additional consultation with the US Fish and Wildlife Service (FWS) would be required at that time.

Therefore, Protesters' arguments that BLM failed to address threatened and endangered species in the Marietta EA are denied.

**iii. *BLM's Analyses of Air Quality and Greenhouse Gas Emissions are Deficient and Fail to Examine the Relevant Data***

**a. *The EA Failed to Provide Quantitative Analysis for Criteria Air Pollutants***

Protesters argue that BLM failed "to provide any quantitative analysis of criteria pollutants" and failed to "adequately analyze direct, indirect, or cumulative impacts from increased ozone and other pollution in the area based on reasonably foreseeable development" (Page 8). However, the Marietta EA included quantitative analyses of greenhouse gases (GHG) impacts.

Best available science was used to approach the greenhouse gas emissions calculation for the Marietta EA: "Life cycle greenhouse gas emissions of Marcellus shale gas (and associated supplementary data) (Jiang et al., 2011) was used as the basis for estimating GHG emissions from the preproduction phase of potential oil and gas development in the Marietta Unit" (Page 86). The methodology was included step by step within the Marietta EA in pages 90-92. As it relates to Ohio, the Marietta EA states that: "Ohio's Natural Gas and Crude Oil Exploration and Production Industry and Emerging Utica Gas Formation Economic Impact Study estimated that the average amount of natural gas per the life of a natural gas well is 5 billion cubic feet (bcf) (Kleinhenz & Associates 2011)" (Page 90). "Using...U.S. EPA combustion emission factors for natural gas (see Appendix E) allowed BLM to compare combustion emissions to those calculated for this EA" (Page 93).

The Marietta EA also discloses calculation assumptions (Page 86):



Disturbance for wellpad approximately 5 acres, approximately 6 wells per wellpad (per the 2006 RFDS), approximately 25 years for the lifetime of a well, use of horizontal drilling and hydraulic fracturing.

Based on the location of the proposed lease, geological formations, and similar construction techniques that would be used if future production was to occur in the Marietta Unit, the preproduction data gleaned from Jiang et al., 2011, is applicable to possible foreseeable mineral development within the Wayne National Forest.

BLM's calculations of emissions also include emissions, which may occur after minerals are provided. As to post-production impacts, the Marietta EA states (Page 89):

...emissions associated with the post-production phase of development were calculated based on reasonable assumptions and standard emissions factors. Mean emission factors used in this EA for production of natural gas, processing, transmission and storage, distribution, and combustion were provided by Venkatesh et.al. (2011).

Nonetheless, BLM acknowledges that certain aspect of oil and gas development cannot be determined until specific plans of operation are formulated. The uncertainties regarding development are also discussed in the Marietta EA (Page 92-93):

There are many factors that affect the potential for GHG emissions estimates at the leasing stage: a lease may not be purchased, so no GHG emissions would be expected; a lease may be purchased but never explored, so again there would be no GHG emissions; a lease may be purchased and an exploratory well drilled that showed no development potential, so minimal GHG emissions would occur; or a lease may be purchased, explored, and developed. If developed there are notable differences in the potential for emissions related to a wide variety of variables, including the production potential of the well, economic considerations, regulatory considerations, and operator dynamics, to name a few.

*b. The EA Arbitrarily Underestimates the Impact of Methane and Nitrous Oxide Emissions*

Protesters argue that “[t]he EA uses a long-outdated estimate of the ‘global warming potential,’ or ‘GWP,’ of greenhouse gases other than carbon dioxide. However, the Marietta EA explicitly states for the basis for using these GWPs estimates (Page 205):

While EPA recognizes that Fifth Assessment Report (AR5) GWPs have been published, in an effort to ensure consistency and comparability of GHG data between EPA's voluntary and non-voluntary GHG reporting programs (e.g. GHG Reporting Program and National Inventory), EPA recommends the use of AR4 GWPs. The United States and other developed countries to the UNFCCC have agreed to submit annual inventories in 2015 and future years to the UNFCCC using GWP values from AR4, which will replace the current use of SAR GWP values. Utilizing AR4 GWPs improves EPA's ability to analyze corporate, national, and sub-national GHG data consistently, enhances

communication of GHG information between programs, and gives outside stakeholders a consistent, predictable set of GWPs to avoid confusion and additional burden.

*c. The EA Failed to Analyze The Significance and Severity of Greenhouse Gas Emissions*

Protesters argue “[the EA fails to analyze the impact or severity of greenhouse gas emissions, such as providing a calculation of the social cost of carbon” (Page 9). However, the Marietta EA adequately addresses climate change and emissions. Impacts resulting from direct and indirect effects of oil and gas development are discussed as follows (Page 84):

Climate change has the potential to pose challenges for many resource uses. Increased temperatures, drought and evaporation may reduce seasonal water supplies for wildlife and could impact forage availability. However, in non-drought years, longer growing seasons resulting from thermal increases may increase forage availability throughout the year. Shifts in wildlife habitat due to climate change may influence hunting and fishing activities. Drought and resulting stress on vegetation is likely to increase the frequency and intensity of forest fires and invasive species, causing even more disruption within the ecosystem.

The Marietta EA addresses potential environmental impacts to air quality. As to the ability to identify site-specific air quality concerns, the Marietta EA states (Page 94):

Further NEPA analysis would be conducted at the [Application for Permit to Drill (APD)] stage, when specific development details with which to analyze potential GHG emissions are likely to be known.

The Marietta EA establishes the following mitigating measures for potential impacts to air quality identified during the APD stage (Page 95):

The BLM encourages industry to incorporate and implement BMPs to reduce impacts to air quality through reduction of emissions, surface disturbances, and dust from field production and operations...Additionally, the BLM encourages oil and natural gas companies to adopt proven, cost-effective technologies and practices that improve operational efficiency and reduce natural gas emissions. In October 2012, USEPA promulgated air quality regulations for completion of hydraulically fractured gas wells (USEPA, 2015b). These rules required air pollution mitigation measures that reduced the emissions of volatile organic compounds during gas well completions. Mitigation included utilizing a process known as a “green” completion in which natural gas brought up during flowback is captured in tanks rather than in open fluid pits. Among other measures to reduce emissions include the USEPA’s Natural Gas STAR program. The USEPA U.S. inventory data shows that industry’s implementation of BMPs proposed by the program has reduced emissions from oil and gas exploration and development (USEPA, 2016i).

Therefore, Protesters arguments as to BLM’s failure to analyze air quality and greenhouse gas

emissions and failure to examine relevant data is denied.

**iv. BLM Arbitrarily Underestimated Surface Disturbance Impacts from Limits Of Disturbance (“LODs”), Gathering Lines, Well Pads, and Compressor Stations**

Protesters argue “the EA ignores or underestimates surface disturbance from well pads, compressor stations, wastewater ponds, and gathering lines” (Page 9). The Marietta EA draws from BLM’s expertise to estimate the surface disturbance from all oil related activities. The Marietta EA states (Page 23):

Although there would be no surface disturbance from the action of leasing, the EA analyzes a reasonably foreseeable development scenario (RFDS) to address the potential environmental effects from potential future oil and gas development.

In addition, the Marietta EA explains how this projection was developed (Page 24):

The 2006 RFDS projected a total of 135 acres of disturbance (see Table 2-1, below) to federal surface in the Marietta Unit from exploration and production activities, regardless of mineral ownership (scenarios A and B in Figure 2.1.), with 121 acres needed to support long term production. The analysis assumed that after exploration and production ceased, 151 acres would be reclaimed per state and federal requirements. The projected surface disturbance included all acreage potentially affected by future oil and gas development activities, such as road construction; well pad construction, construction of turnaround/production facility areas, pipelines, and other related activities.

...approximately 10 acres have already been disturbed from oil and gas development in the Marietta Unit; therefore, the remaining acreage of surface disturbance that could occur within the Marietta Unit that is analyzed in this EA, is approximately 70 acres. Of those 70 acres, approximately 40 acres of disturbance would persist for the long term, until final reclamation is completed.

The Marietta EA states what activities may occur due to development (Page 25):

Reasonably foreseeable activities that could occur as a result of future oil and gas development associated with leasing in the Marietta Unit include surface disturbance associated with preparation for drilling including construction of a road, drilling pad, and reserve pit. Constructed access roads normally have a running surface width of approximately 12 to 16 feet; the length is dependent upon the well site location in relation to existing roads or highways. The average length of road construction is approximately 0.5 miles per well pad. Therefore, approximately two acres would likely be affected by road construction. Typically from 3 to 5.5 acres are cleared and graded level for the construction of the drilling pad. If horizontal drilling occurs, each drilling pad could have up to eight lateral lines. If the well produces natural gas, and the flowline is in the road, another 0.5 acres may be affected by flowline construction. These disturbances are typical for private or federal ownership well pad locations but may be subject to

adjustment based on site-specific conditions, which have not yet been determined.

Therefore, Protesters arguments as to estimated surface disturbance of foreseeable development on the Marietta Unit are denied.

**v. BLM Failed to Adequately Address the Potential Impacts of Fracking**

Protesters argue that “[t]he EA fails to analyze numerous impacts related to fracking, including potential threats to human health and safety, such as carcinogenic, developmental, reproductive, and endocrine disruption effects, air quality, risks to water resources, and seismic risk” (Page 10). However, hydraulic fracturing is just a single aspect of overall oil and gas development, which has been analyzed throughout the Marietta EA.

The Marietta EA considers impacts to public health and safety of oil and gas development, including the use of hydraulic fracturing, in depth. As to public health and safety effects, the Marietta EA states that (Page 7):

No direct effects from leasing. From future reasonably foreseeable development, effects include potential exposure to contamination that may cause health conditions in sensitive or susceptible populations. However, federal, state, and local regulations, as well as health standards and protocols ensure that potential operations do not compromise public health and safety.

The Marietta EA discusses the mitigating measures that would be attached to any potential lease, which led to this determination that oil and gas development may occur without significant environmental impacts (Pages 65-66):

The 2006 Forest Plan/EIS identifies standards for mineral development that the WNF implements to provide a healthy and safe environment for people and wildlife. Some examples are:

- SFW-MIN-2: Require that all proposed surface-disturbing mineral activities have an approved operation and reclamation plan before the activity begins;
- SFW-MIN-3: Require that operators conduct activities and maintain equipment to prevent the discharge of oil or brine onto the ground or into surface waters;
- SFW-MIN-4: Upon discovery or notification of an accidental spill of crude oil or brine that discharges, or threatens to discharge, into surface waters, notify the Ohio Environmental Protection Agency Emergency Response and Special Investigations unit in Columbus; and
- SFW-SAFE-19: Any wastewater that originates from oil and gas operations would be considered non-federal and so disposal would not be allowed on Wayne National Forest lands (including the roads under jurisdiction of the WNF). In addition, the Ohio Revised Code only allows for four different disposal methods of fluids associated with oil and gas operations: injection, surface application (on

roads only, and only when permitted by the authority with jurisdiction over the road), enhanced recovery (reuse of the fluids in other wells) or other methods to test new technologies and methodologies (ORC 1509.22(C)(1)).

Furthermore, the law specifically states that no one is allowed to place fluids associated with oil and gas operations in surface or groundwater or in or on the land in amounts that cause or could cause pollution of water used for human or domestic animal consumption or damage/injury to public health and safety or the environment (ORC 1509.22).

Other provisions for employees and the public that provide for safety within the WNF include:

- SFW-SAFE-17: Post warnings of dangerous conditions and threats of immediate concern for the safety of Forest employees and the public; and
- SFW-SAFE-18: Issue closure orders to protect the public when clear and present dangers cannot be mitigated in a timely manner.

The Division of Oil and Gas Resources Management (DOGRM) within Ohio's Department of Natural Resources (DNR) maintains an electronic database with information needed in the case of an emergency situation that poses a threat to public health, safety or the environment. Minimum information required is that which is also required for the Emergency Planning and Community Right-To-Know Act regulations (ORC 1509.23(B)). Amended Substitute Senate Bill 315 was signed into law by the Governor on June 11, 2012. This bill amends Ohio Revised Code to require the owner of a well to provide emergency responders with the exact chemical composition of all fluids used in the drilling and stimulating of a well. Exact composition of each proprietary component is made available upon request from emergency responders (Amended ORC 1509.10(H)).

As detailed in pages 8-10 of this letter, BLM included a robust air quality analysis in the Marietta EA. The Marietta EA determines the following as it relates to the effects on air quality from potential oil and gas leasing and development (Page 6):

No direct effects from leasing. Effects can be expected from emissions associated with potential future construction activities and well completion, including National Ambient Air Quality Standards (NAAQS) criteria contaminants and hazardous air pollutants. Effects from emissions may include health hazards, reduced visibility, and contribution to global greenhouse gas emissions. Effects minimized by Standard Operating Procedures (SOPs), best management practices (BMPs) and conditions of approval (COAs) at the time of drilling.

The Marietta EA adequately analyzes the current state, and potential impacts, on water resources related to the proposed action. The Marietta EA states as to the effects to water resources and quality from potential oil and gas leasing and development (Page 6):

No direct effects from leasing. Potential for large surface water withdrawals for drilling

and completion associated with potential reasonably foreseeable future development. Some risk of chemical spills and erosion from roads and well pads. Future reasonably foreseeable effects minimized by Forest Service policies for water withdrawal and waterway protection and soil conservation measures. Additional protections required by the Onshore Orders.

The Marietta EA goes on to acknowledge (Page 105):

While the act of leasing federal minerals would produce no impacts to surface water quality, subsequent exploration and development of the lease parcels have the potential to produce impacts. The potential effects to surface water from reasonably foreseeable mineral development include sediment loading of stream channels due to the erosion associated with site development or operational transport and introduction of pollutants, toxic chemicals, sediment or debris, via spills and releases to surface water from oil/produced water treatment, storage tanks, handling and sanitary facilities or oil/produced water transportation mediums (trucks or pipelines).

Specifically, the Marietta EA addresses concerns regarding withdrawals of water for oil and gas operations (Page 106):

The BLM and Forest Service would not approve water withdrawals that would draw down a surface waterbody to the extent that aquatic life would be measurably adversely impacted, for example, by dewatering a stream enough to entrap fish or expose mussels to dry conditions in a stream that would normally have perennial flow.

As to local aquifers and groundwater, the Marietta EA states (Page 106):

Local aquifers (within the Marietta Unit) do not yield sufficient water to support industrial activities within the Marietta Unit. Therefore, the likelihood that the proposed leasing action and potential future mineral development would affect groundwater quantity is negligible.

However, the Marietta EA does acknowledge potential environmental concerns to water resources, as well as mitigating measures (Page 106):

Future mineral development activities would pose some risk of accidental spills of drilling fluids, produced water, and other chemicals (see also Section 4.7, Wastes, Hazardous or Solid). This risk would be minimized by the requirement, described in the 2012 SIR, for operators to use tanks, instead of open pits, to hold all fluids other than fresh water... The only areas where a spill would pose an unacceptable risk to groundwater quality are designated wellhead protection areas or certain locations within the Ohio River and Little Muskingum River floodplains (Thompson, 2012). Other locations throughout the Marietta Unit tend to have low groundwater pollution potential due to low hydraulic conductivity and depths of groundwater (around 200 feet or less from the surface). Drilling to a production zone that is below a potable water-bearing formation poses the risk of allowing brine and other chemicals to migrate up into a potable water zone. This risk is mitigated in federal wells by casing and cementing requirements in Onshore Oil and Gas Order

Number 2.

Finally, the Marietta EA adequately addresses potential seismic activity from the proposed oil and gas leasing, and potential development. As to the current state of seismic activity in the geographic region, the Marietta EA states (Page 55):

Ohio ranks 28th amongst the 50 states in seismic activity with 8 earthquakes (3.5 or above) between 1974 and 2003. Geologic mapping and 2-D and 3-D seismic data can locate faults within the area but current science may not be able to differentiate a “natural” earthquake from an earthquake induced by fluid injection.

As to the specific seismic impacts of potential oil and gas development, and specifically hydraulic fracturing, the Marietta EA states (Page 103):

A study conducted by the National Academy of Sciences examined the issue of induced seismic activity from energy development. As a result of the study, they found that: (1) the process of hydraulic fracturing a well as presently implemented for shale gas recovery does not pose a high risk for inducing felt seismic events; and (2) injection for disposal of wastewater derived from energy technologies into the subsurface does pose some risk for induced seismicity, but very few events have been documented over the past several decades relative to the large number of disposal wells in operation (National Academy of Sciences, 2012). On April 11, 2012, the Deputy Secretary of the United States Department of the Interior, David Hayes, stated that scientists have been investigating the recent increase in the number of earthquakes in the United States to determine whether there is scientific evidence of a link between unconventional oil and gas production and seismic activity. The preliminary findings did not suggest that HF caused the increased rate of earthquakes. Instead, “at some locations the increase in seismicity coincides[d] with the injection of wastewater in deep disposal wells” (Hayes, D. J., 2012).

Also discussed are the measures that the State of Ohio has taken to prevent seismic activity resulting from oil and gas operations. The Marietta EA states (Page 104):

The ODNR now requires operators drilling within three miles of a known fault or area of seismic activity greater than 2.0 to install seismometers. If seismic activity above 1.0 is detected, work must pause while the seismic activity is investigated, and work must stop if the investigation reveals a probable connection to the drilling operation. This regulation would affect drilling primarily in the southern half of the Marietta Unit, since the known and inferred faults and seismic areas are generally in Washington County or near the Washington-Monroe County line (Ohio Department of Natural Resources, 2014).

Therefore, Protesters arguments as to BLM’s failure to address potential impacts of hydraulic fracturing on public health and safety, air quality, risks to water resources, and seismic risk, are denied.

**vi. BLM Failed to Account for New Fracking Project on the Ohio River and Other Projects**

The Protesters argue that “several other major projects have been proposed in the vicinity of the Marietta Unit, but the EA fails to address their cumulative effects in connection with new leasing” (Page 12). However, the Marietta EA adequately included all known projects into its cumulative analysis. For this the Marietta EA used all available knowledge of projects disclosing them as follows (Page 121):

- Approval of an electric line that crosses 600 feet of NFS lands, 2009;
- Habitat improvement for yellow-fringed orchid on 38.5 acres using a variety of mechanical and chemical treatments and minor construction activities, 2010;
- Approval of three oil and gas wells, 2010;
- Renewal of two miles of electric pipeline permits, ranging in width from 15 to 80 feet, 2010
- Renewal of 61 acres of hay and row-crop cultivation and 114 acres of grazing, most of which is in river corridor management area, 2010;
- Renewal of permits for 3,300 feet of road access, 2010;
- Mechanical treatments on managed openings, 2011;
- Habitat management, including 564 acres of early successional habitat creation, 432 acres of alleged stands using single-tree and group selection, and 870 acres of prescribed burning, 2011;
- Approval of an Application for Permit to drill a vertical oil and gas well on a 0.74-acre pad with a 250-foot access road, 2013;
- Plugging and abandonment of six orphaned wells, 2014;
- 4.4-mile expansion of Kinderhook equestrian trail, 2015; and
- Approval of a 150-foot-by-10-foot ATV trail to service an oil and gas well, 2015.

Protesters further argue that “BLM must analyze the effects of Eclipse Resources’ contemplated project on WNF, Ohio River, and West Virginia resources, as a reasonably foreseeable consequence of new leasing” (Page 12). In addition to the projects listed above, the cumulative effects analysis also considers recent past, ongoing, and reasonably foreseeable mineral development (private and federal) within the Marietta Unit. As of 2015, there were 285 federal wells in Washington County, 117 federal wells in Monroe County, and none in Noble County. There were a total of 790 active wells on private lands in the Wayne National Forest.

However, any new project is not expected to have a significant impact that may shift the Finding



of No Significant Impact because of the establishment of mitigation measures and Best Management Practices for the proposed action (Pages 94-96):

The BLM encourages industry to incorporate and implement BMPs to reduce impacts to air quality through reduction of emissions, surface disturbances, and dust from field production and operations... Additionally, the BLM encourages oil and natural gas companies to adopt proven, cost-effective technologies and practices that improve operational efficiency and reduce natural gas emissions. In October 2012, USEPA promulgated air quality regulations for completion of hydraulically fractured gas wells (USEPA, 2015b). These rules required air pollution mitigation measures that reduced the emissions of volatile organic compounds during gas well completions. Mitigation included utilizing a process known as a “green” completion in which natural gas brought up during flowback is captured in tanks rather than in open fluid pits. Among other measures to reduce emissions include the USEPA’s Natural Gas STAR program.

In addition, the Marietta EA states (Page 125):

Despite the potential for cumulative effects...reclamation and other stipulations and best management practices, as described earlier in this EA, would help to minimize the potential for significant adverse cumulative effects...Additional protections may be applied at the APD stage. Appendix C of this EA summarizes the laws and regulations that would apply to mineral development activities on private land with regard to federally listed species.

Therefore, Protesters’ argument that BLM failed to account for new fracking projects on the Ohio River and other projects are denied.

#### **B. BLM Violated its Statutory Duty to Prepare an EIS under NEPA**

Protesters argue that NEPA requires that BLM prepare an EIS for the action” (Page 14). As previously discussed, Eastern States has satisfied the National Environmental Policy Act (NEPA) requirements analyzing impacts of oil and gas operations necessary prior to offering the Ohio Parcels. In addition, under NEPA an EA may be relied upon without any further environmental analysis when the EA’s analysis show that no significant impacts to environmental resources would occur. A finding of no significant impact does not require that no impacts are identified, rather, no impact may result from adequate regulations and mitigation measures that negate any potential significant impact. The Marietta EA contains adequate mitigating measures to any potential impacts. Therefore BLM can determine based on the analysis included throughout the EA that significant environmental impact would not occur. Therefore, Protesters’ argument that BLM violated its statutory duty to prepare an EIS is denied.

#### **C. BLM Violated Section 7 of the ESA by Failing to Consult with FWS on the Impacts of the Proposed Oil and Gas Leasing on Threatened and Endangered Species**

Protesters argue that “BLM violated the ESA by failing to consult with FWS concerning the impacts of its oil and gas leasing proposal on listed species” (Page 14). The Forest Service and

BLM have coordinated with the FWS multiple times as the respective agencies have analyzed the potential for oil and gas leasing within the Marietta Unit of the Wayne National Forest.

The Marietta EA details the timelines of the various Section 7 consultations (Pages 18-19):

The Forest Service completed a Biological Evaluation (BE) and the USFWS issued its Biological Opinion (BO) on November 22, 2005. The BO established a tiered approach to the Section 7 consultation. The programmatic (Tier I) BO (November 22, 2005) covers all the activities described in the 2006 Forest Plan/EIS at a programmatic, non-site-specific level. Because the BLM was a cooperating agency in the 2006 Forest Plan and EIS, the consultation conducted with respect to the 2006 Forest Plan and EIS applies to the Proposed Action analyzed in this EA. As part of the 2012 SIR, the Forest Service reviewed new information related to hydraulic fracturing and whether there could be additional effects to threatened and endangered species that had not been previously analyzed in the 2006 Plan/ EIS. The Forest Service and the USFWS concluded that no further analysis or consultation was needed and that the consultation conducted under the 2006 Plan/EIS was still valid. As the BLM analyzes individual projects pursuant to the Forest Plan, the BLM is responsible for reinitiating consultation and providing the USFWS with additional information; this process is called Tier II consultation.

...Since the BLM was a cooperating agency it can adopt the consultations included within the Plan as their 2012 revision done for their 2012 SIR.

...the BLM would submit a Tier II Biological Assessment to the USFWS when it receives an APD, if it determines that potential effects to critical habitat, fish or wildlife could occur. The Marietta EA adequately addresses Section 7 of the ESA and the rationale is (Pages 19-20):

In addition, the BLM worked directly with the FWS to identify the species that might be impacted by potential leasing within the Marietta Unit. As a result of that informal consultation, the BLM NSD prepared a Biological Assessment (BA). The BA concluded that proposed oil and gas leasing was not likely to adversely affect the threatened and endangered species identified by the FWS, as further discussed below.

Therefore, Protesters' argument that BLM violated Section 7 of the ESA for failing to consult with FWS is denied.

#### **D. BLM's Reliance on the 2005 Forest Plan Biological Opinion and Failure to Reinitiate Consultation Violates the ESA Section 7**

Protesters argue that "BLM's reliance on the 2005 Biological Opinion is misplaced because it is out of date" (Page 14). However, as the Marietta EA states, Forest Service reasonably decided consultation was not necessary in light of the information provided in the 2012 SIR (Page 173):

The 2012 SIR was completed to determine if the 2006 Forest Plan/EIS needed to be updated in light of new information regarding hydraulic fracturing. The Forest Service determined that the potential effects associated with hydraulic fracturing and horizontal

drilling were not significantly different from those of vertical drilling and that the mitigation measures in place for vertical drilling would suffice for horizontal drilling/hydraulic fracturing.

As to BLM's role in this analysis, the Marietta EA explains (Page 177):

BLM was a cooperating agency on the 2006 Forest Plan/EIS and provided input for the 2012 SIR. Both the Forest Service and the USFWS concurred that no further analysis or Endangered Species Act consultation was needed at this stage.

On November 4, 2015, the NSD sent to the FWS a letter containing a BLM prepared a Biological Assessment (BA). The conclusion of the Biological Assessment was that proposed leasing, with the protective measures incorporated into the lease terms, was not likely to adversely affect the Northern long-eared bat, Indiana bat, Fanshell mussel, Snuffbox mussel, Sheepnose mussel, Pink mucket pearly mussel, American Burying beetle, Northern monkshood, Running buffalo clover, Small whorled pogonia, and the Virginia spirea. The protective measures outlined in the BLM's Biological Assessment incorporated stipulations and notices found in the US Forest Service 2006 LRMP/EIS and associated Biological Opinion, plus additional measures for protection of Northern long-eared bat hibernacula and requirements to keep wildlife out of tanks. On July 29, 2016, the BLM supplemented the Biological Assessment by submitting the Northern Long-eared Bat 4(d) Rule Streamlined Consultation Form.

The conclusion in the November 4, 2015, Biological Assessment that oil and gas leasing is not likely to adversely affect the aforementioned listed species is based on the fact that leasing does not authorize any surface disturbance activities. Consistent with the ESA regulations and guidance outlined in the US Forest Service 2006 LRMP/EIS and associated Biological Opinion, the BLM and US Forest Service would prepare and submit a Tier II Biological Assessment if, subsequent to leasing, an application for permit to drill is filed with the BLM. Again, the protective measures attached to a lease provide the prospective lessee notice that protection of those species must be taken into consideration if an application for permit to drill is submitted to the BLM. Additional consultation with the FWS would be required at that time.

Therefore, Protesters' arguments BLM's reliance on the 2005 Forest Plan Biological Opinion is misplaced, and consultation must be reinitiated, are denied.

#### **E. BLM Failed to Respond to Comments**

Protesters argue that "[w]e pointed out various significant foreseeable impacts in our previous comments.... BLM's responses in its updated Final EA have dismissed nearly all of these issues without providing any evidentiary support or scientific analysis to conclude that the impacts are insignificant" (Page 15). However, the BLM adequately responded to comments since it complied with the CEQ regulations at 40 CFR §1503.4 which recognize several options for responding to substantive comments, including: modifying one or more of the alternatives as requested, developing and evaluating suggested alternatives, supplementing, improving, or modifying the analysis, making factual corrections, explaining why the comments do not warrant further agency response, citing cases, authorities, or reasons to support the BLM's position.

The CEQ recommends that responses to substantive comments should normally result in changes in the text of the NEPA document, rather than as lengthy replies to individual comments in a separate section (see Question 29a, CEQ, Forty Most Asked Questions Concerning CEQ's NEPA Regulations, March 23, 1981). Therefore a short response to each substantive comment and a citation to the section or page where the change was made was the method adopted for this Final EA. Similar comments were summarized and responded to as a whole and if the comment did not entail any change to the Marietta EA it was also disclosed within the response matrix developed. This response matrix was attached as Appendix A (Page 161) to the Marietta EA.

Therefore, Protesters' argument that BLM failed to respond to comments is denied.

#### **F. BLM Failed to Request the Forest Service's Participation as a Cooperating Agency**

Protesters argue that "BLM failed to request the Forest Service's participation as cooperating agency in the preparation of the EA, in violation of the CEQ regulations" (Page 15).

In accordance with BLM regulations at 43 CFR §3120, the Forest Service is not obliged to provide proof to the BLM of its independent analysis, only whether or not it grants consent to leasing. How the Forest Service arrived at its independent conclusion to consent or not is beyond the purview of BLM's authority. The Forest Service's consent action does not result in an irretrievable commitment of resources because the BLM is the authorized agency to approve or not approve a particular parcel for leasing.

Eastern States and NSD fulfilled their requirements in coordinating with the surface management agency (SMA) for the Ohio parcels, within Wayne National Forest. As the NEPA Handbook H-1790-1 states (page 112):

You must invite eligible governmental entities (Federal, State, local, and tribal) to participate as cooperating agencies when preparing an EIS (516 DM 2.5(e)). You must also consider any requests by eligible governmental entities to participate as a cooperating agency with respect to a particular EIS, and will either accept or deny such requests. If such a request is denied, the BLM will inform the other agency and state in writing, within the EIS, the reasons for such denial. Throughout the preparation of an EIS, you must collaborate, to the fullest extent practicable, with all cooperating agencies, concerning those issues relating to their jurisdiction or special expertise (516 DM 2.5(f)). Prepare a Memorandum of Understanding (MOU) with any cooperating agency, clearly defining the roles and responsibilities of each agency.

These requirements explicitly apply to EIS, but coordination between BLM and the SMA is encouraged regardless the level of NEPA reviews.

As discussed above, NSD's review included a request for Forest Service inspection of the proposed parcels, consent to ensure leasing of the parcels would be in conformance with the applicable Forest Plan decisions, and the receipt of consent to offer the described parcels. Furthermore, BLM and Forest Service have worked to incorporate mineral leasing

Therefore, Protesters' argument that BLM failed to requests the Forest Service's participation as

a cooperating agency is denied.

#### **G. The Forest Service's Consent is Invalid, and Therefore Cannot Properly Authorize the Lease Sale**

Protesters argue that “BLM cannot properly base its approval of the lease sale on the Forest Service’s consent to new leasing” (page 16). As Protesters acknowledge, under 36 CFR §228.102(e)(1), Forest Service may consent after determining that “leasing of the specific lands [1] has been adequately addressed in a NEPA document and [2] is consistent with the Forest land and resource management plan.” On June 15, 2016, BLM received letters from the Forest Service granting consent based on its discretion and expertise under applicable laws and regulations.

The BLM and the Forest Service held numerous discussions throughout the preparation of the Marietta EA, and often provided notes and recommendations to assist the BLM in improving the underlying analysis. Furthermore, Eastern States, NSD, and Forest Service jointly sought public involvement in the NEPA process by conducting a series of public meetings. Beginning on November 1, 2015, public notices regarding these meetings appeared in local newspapers, including the Marietta Times, Athens Messenger, and the Ironton Tribune, for two consecutive weeks. The BLM also issued a press release to other news outlets on November 2, 2015, notifying the public of dates, times, and locations of the public meetings. Public meetings were held on November 17, 2015 in Marietta, November 18, 2015 in Athens, and November 19, 2015 in Ironton to provide information and gather public input regarding issues that the BLM should consider in this Marietta EA.

Protesters further argue that “[t]he Forest Service’s [2012 SIR], which is the only document in which the Forest Service has ever attempted to address the effects of fracking from new leasing, is not a proper ‘NEPA document’ as it has never been subject to public review and comment.” As previously stated, while hydraulic fracturing has particular sets of potential impacts and necessary mitigating measures, it is simply an aspect of oil and gas development, which was considered in the 2006 FP/FEIS. Moreover, the 2012 SIR was undertaken by Forest Service to seek FWS’s expert opinion as to whether the potential impacts of new oil and gas development techniques warranted a modification to the previously made determination that oil and gas development may occur without significant impact in the 2005 Biological Opinion. As discussed above, prior to issuing consent to lease Subject Parcels, the Forest Service assisted in the production and review of the Marietta EA, which is in fact a valid NEPA document that evaluates potential effects and mitigating measures associated with all aspects of oil and gas development, including hydraulic fracturing.

Therefore, Protesters argument that Forest Service’s consent is invalid is dismissed.

#### **DECISION**

After a careful review, it has been determined that all of the protested Subject Parcels as described in the March Sale Notice may be offered at the March Lease Sale. The protests to all Lease Sale Parcels are denied for the reasons described above.

You may appeal this decision to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and the attached Form 1842-1 (Attachment 2). If you file an appeal, your notice of appeal must be filed in the BLM Eastern States Office, 20 M Street SE, Suite 950 Washington, D.C. 20003, within 30 days from receipt of this decision. You have the burden of showing that the decision appealed from is in error.

If you wish to file a petition (pursuant to regulation 43 CFR 4.21) (request) for a stay (suspension) of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

#### Standard for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied,
- (2) The likelihood of the appellant's success on the merits,
- (3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) Whether the public interest favors granting the stay.

Please contact Elena Fink (Deputy State Director, Natural Resources) at (202) 912-7730 or Justin Katusak (State Litigation Coordinator) at (202) 912-7727 with any further questions or concerns.

  
Karen E. Mouritsen  
State Director